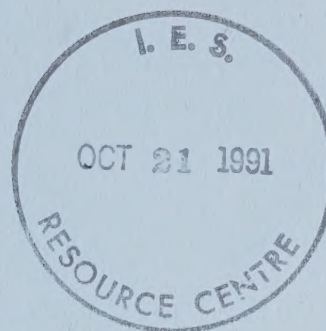


CA2ONCH 91C02

Ontario



The Joint Board THE CONSOLIDATED HEARINGS ACT, 1981

CH-91-02

DECISION AND REASONS FOR DECISION

IN THE MATTER OF two appeals, one by the Niagara Escarpment Commission from a decision of the Committee of Adjustment of the Township of Mono whereby the Committee granted, upon conditions, an application by **Sebastian Cappellano** to sever a parcel of land composed of Part of Lot 5, Concession 7, E.H.S. The second appeal is by Sebastian Cappellano from a decision of the Niagara Escarpment Commission, whereby the Commission refused an application for a development permit to construct a one storey, single family dwelling, including an attached garage, septic system and driveway on the above defined land.

BEFORE: **T.F. Baines, Q.C.** - **Chairman**
 A. Roy - **Member**

DECISION DELIVERED ORALLY ON SEPTEMBER 11, 1991

ISSUED at TORONTO this 21ST day of OCTOBER, 1991.

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REPORTER	J.R. Nelson, Q.C.	Chairman
	A. De	Member
COUNCIL		
A. Smith	for the Niagara Excavation Commission	
APPEARANCES		
B. Campbell	Applicant	
N. Campbell		
D. Johnson	for the Niagara Excavation Commission	

IN THE MATTER OF Sections 2 and 3 of the *Consolidated Hearings Act*, S.O. 1981, as amended;

AND IN THE MATTER OF Section 52(7) of the *Planning Act*, 1983;

AND IN THE MATTER OF Section 25 of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1980;

AND IN THE MATTER OF two appeals, one by the Niagara Escarpment Commission from a decision of the Committee of Adjustment of the Township of Mono whereby the Committee granted, upon conditions, an application by Sebastian Cappellano to sever a parcel of land composed of Part of Lot 5, Concession 7, E.H.S. The second appeal is by Sebastian Cappellano from a decision of the Niagara Escarpment Commission, whereby the Commission refused an application for a development permit to construct a one storey, single family dwelling, including an attached garage, septic system and driveway on the above defined land.

BEFORE:	T.F. Baines, Q.C.	-	Chairman
	A. Roy	-	Member

COUNSEL:

N. Spotton - for the Niagara Escarpment Commission

APPEARANCES:

S. Cappellano - Appellant
R. Cappellano

D. Johnston - for the Niagara Escarpment Commission

REASONS FOR DECISION

Decision Delivered orally by T.F. BAINES and A. ROY on September 11, 1991

Mr. and Mrs. Cappellano are appealing against a refusal by the Niagara Escarpment Commission (NEC) of a development permit for a three acre lot out of their 63 acre farm, being part of Lot 5 Concession 7, EHS. The Niagara Escarpment Commission, in turn, is appealing a granting of consent by the Township of Mono Committee of Adjustment for the creation of an approximate three acre lot of irregular shape at the northeast corner of the Cappellanos' lands. The lands are designated Rural in the Mono Official Plan and Rural in the Niagara Escarpment Plan. The Cappellanos appear not to have had any awareness of the controls on their land when they purchased a few years ago. This is the second time they have sought a consent out of their lands though the previous one faced on Airport Road rather than the concession sideroad and the parcel totalled 14 acres in size.

The Cappellanos submit the lot, herein, is, in effect, a natural consent isolated from the rest of their property by a small gully with a creek that apparently flows pretty well year round. Their land is Class 7 on the Canada Land Inventory according to the report of the Ministry of Agriculture and Food. Even though there is a proposal for 400 feet of frontage on the lot, they suggest the openness is not there in reality and hence a new house could not be seen from Sideroad 5 or from Airport Road until a passerby on the sideroad was right opposite the lot.

The Board appreciates that due to its small size it is not readily useable for the growth of corn as is being done by a tenant farmer on the remaining land.

The Board agrees several of the usual commenting agencies indicated "no objection".

The Cappellanos suggest that where the Niagara Escarpment Plan in its Development Criteria Section 2.4(2) uses the words "should be created primarily in Urban, Minor Urban and Escarpment Recreation Areas" could be interpreted as being not an absolute prohibition and, in this case, should be interpreted in their favour given the otherwise reasonableness of their application. They further point out that none of the neighbours have complained or objected despite receiving notice of the application.

The purpose of obtaining consent to sever, in their case, is to get money to finance the purchase of farm machinery to enable them to cultivate their own lands by themselves.

The Commission counsel points out that the proposed consent contravenes:

1. some policies of the Niagara Escarpment Plan in its section on "New Lot Creation" under both the Escarpment "Rural" and "General Development Criteria".
2. section 2 of the *Niagara Escarpment Planning and Development Act* as it relates to the "maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment".
3. some policies against the fragmentation of farms as found in the Food Land Guidelines.
4. policies against the creation of small lots as found at Sections 15(3)(c)(6) of the Township Plan and the policy against non-fragmentation of lots found at 15(3)(c)(8) of that Plan.

The Board considers that this proposed lot, at some distance from any recognized community and at the end of a series of homes with frontage of 200 to 300 feet each, simply does not reflect any attempt or reasonable interpretation as being within an urban community like a hamlet or village and does not comply with the requirement that there should be no creation of ribbon or strip development as defined in a previous Ontario Municipal Board decision, C890957, re Galbraith. Clearly, that strip development as found on the existing sideroad would be extended by this lot if approved. The Board considers that the lot at this site would, in effect, fragment farm lands when the land around it is also considered. It is not simply the property owned by the Cappellanos that needs to be considered in this context.

If, as here, there are other farm lands in the general area actively being farmed then the creation of one more small estate type lot creates the possibility of further conflict between the recent urban owner, as likely would be the case, and farm practices in the area.

While, in the mind of the applicant, the situation may seem exceptional due to the swale/ravine separating the main parcel from the three acre lot and there is a perceived adequate tree screen to the Township sideroad and Airport Road, the Board does not see

the situation as outside the application of Section 2.4 of the Niagara Escarpment Plan on lot creation.

The Board has considerable sympathy for the Cappellanos' intention to get rid of a small parcel that they see as relatively useless to the farm activity and permit them to get into full-time farming with the money that is generated. This Board, however, would not be performing its proper function if it did not pay attention to all of the relevant facts, policy and legislation that affects these lands. The Board considers the applicant would be contravening the prohibition on strip development and fragmentation of farms as well as the policy encouraging new development to take place primarily in small urban centres. Further, as has been cited in numerous decisions of the Ontario Municipal Board dealing with consent requests, the generating of income thereby is not a proper planning principle to justify the granting of a consent.

DECISION

For the foregoing reasons, the Board allows the appeal of the Niagara Escarpment Commission, dismisses the appeal of the Cappellanos, and denies their application for consent and development permit. The Board, accordingly, so orders.

ISSUED at TORONTO this 21ST day of OCTOBER, 1991.

"T.F. Baines"

T. F. Baines
Chairman

"A. Roy"

A. Roy
Member

LIST OF EXHIBITS

CH-91-02

<u>Exhibit No.</u>	<u>Description</u>	<u>Filed By</u>
1.	C. V. of David B. Johnston	NEC
2.	Notice of Meeting of Committee of Adjustment, Township of Mono, October 22, 1990	NEC
3.	Application for Development Permit November 2, 1990	NEC
4.	Application for Consent B56/90 to NEC from Cappellano, November 6/90	NEC
5.	Staff Report/Development Permit Cappellano from NEC - January 2, 1991	NEC
6.	Application for Consent/Letter from NEC - October 16, 1990	NEC
7.	Letter from Ministry of Agriculture and Food to NEC - January 18, 1991	NEC
8.	Official Plan, Township of Mono, November 8, 1977	NEC
9.	Memo to Committee of Adjustment Mono Township - October 9, 1990	NEC
10.	Application Summary to Consolidated Hearing - September 19, 1991	Cappellano
11.	Photograph of Frontage of Lot on Side Road	Cappellano
12.	Photograph of East Side of Lot	Cappellano
13.	Photograph of Valley and Ravine	Cappellano
14.	Ontario Cabinet Decision on NEC Plan and Earl Dodds - January 24, 1991	NEC
15.	Decision Delivered by T.F. Baines on Section 52(7) of Planning Act, OMB File C890957 - December 19, 1990	NEC

CA20NCH 91C02

Ontario. Consolidated Hearings Act, 1981.

CH-91-02

DECISION AND REASONS FOR DECISION IN THE MATTER
APPEALS BY THE NIAGARA ESCARPMENT COMMISSION
DECISION OF THE COMMITTEE OF ADJUSTMENT OF THE

1991

**RESOURCE CENTRE
INST. FOR ENVIRON'L. STUDIES
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